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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,053	11/17/2003	Steve R. Burghardi	023829-0256	3666

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EXAMINER

ABBOTT, YVONNE RENEE

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/715,053

Applicant(s)

BURGHARDI ET AL.

Examiner

Yvonne R. Abbott

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 03 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 34-36 and 38 is/are allowed.
- 6) ☒ Claim(s) 1-6, 9, 10, 13-17, 22-25, 27-29, 32, 37, 39-43 and 45 is/are rejected.
- 7) ☒ Claim(s) 7, 8, 11, 12, 18-21, 26, 30, 31, 33, 44 and 46 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/17/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 21, it is unclear as to which "nutrient components" of claim 20 is being further modified, and it is not clear whether the components include both "lysine and net energy" or one of "lysine and net energy"

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

a. A person shall be entitled to a patent unless –

b. (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 32, 37, 39, 43 and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by the schematic representation of the computer system used by Cargill, Inc. prior to December 1999 as cited by Applicants 1449 which shows a system and method for producing a customized feed for an animal, said computer system comprising a first storage or memory portion which stores animal data representative of the characteristics of an animal such as body weight and age; a second memory portion configured to store first feed farm ingredients data located at a first location; a third memory portion configured to store second feed manufacturing site ingredients data located at a second location; a fourth memory portion configured to store evaluation

data representative of at least two evaluation criteria such as the animal's nutrient constraints, or the product's nutrient constraints; a data a processing circuit connecting the memory portions and configured to generate profile data representative of a nutrient profile for the animal based upon the data, the circuit being further configured to generate ration data for custom feed representative of amounts of a combination of ingredients from the first and second locations and based upon the profile data, first and second feed data, and the evaluation data. It is implied that the resulting animal feed product will be fed to the animal.

4. Claims 32, 37, 39, 43 and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Zamzow et al. (4,712,511). Zamzow et al. disclose a system and method for delivering an animal feed product wherein a programmable controller stores or keeps track of various physiological states of individual livestock, such as weight, age, illnesses, and in accordance with these variables, a specified feed formulation (which inherently contains nutrients) may be obtained; the controller generates mix and ration control signals in accordance with the animal information input; a mixed ration contains feed mix combined from different sources into a common container or mixed separately; the mix may be varied in accord with evaluation criteria based on milk weight and milk quality; ration mix and animal status data are stored as well as forage sample analysis data for balancing the forages on hand with the necessary grains, concentrates and minerals in order to obtain maximal nutritional value; individual rations are calculated based on data and the updated ration files.

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5. Claims 32, 37, 39, 43 and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Ralston Purina Co (WO 00/41575). The Purina reference discloses methods for customizing animal food for individual animals based on user input through an electronic user interface, processing the input with stored data on a main computer coupled to the interface, generating control signals to control the operation of food manufacturing according to the user input which is used to form an individual animal profile, which is used to generate a customized food formula based on specific amounts of a variety of ingredients; wherein the main computer includes a database which stores nutritional information which is combined with individual pet profiles; wherein the user input data representative of the animal's characteristics includes feed ingredients (including grain) at different bin locations; and wherein nutrient profiles are generated including ingredient statements and analysis, specific feeding and care recommendations including the rationale behind the customized formula of the pet food, and recommendations regarding the use of supplements.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-6, 13-17, 22-25, 27-29, and 40-42 are rejected under 35 U.S.C. 103(a)

as being unpatentable over Bebiak et al. (WO 00/41575) in view of Pratt (6,135,055). Bebiak et al. lists various evaluation criteria on which the customized feed should be based (page 4, lines 9-29), however, the animal production rate, cost of feed per unit animal weight gain, or feed weight per unit animal weight gain are not specifically disclosed. Pratt discloses a system which determines and stores animal performance, feed consumption, weight gain, daily feed costs per head, health history, performance of individual animals, costs of feed and animals, and physical characteristics by individual animal. Pratt teaches that it would be obvious to employ a variety of integrated systems of analysis to achieve the desired animal management.

8. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bebiak et al. in view of Pratt and further in view of Gaalswyk (5174244). Although it is not disclosed that the system of Bebiak et al. and Pratt is a digital computer system, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a digital system since digital computers are well known as taught by Gaalswyk and since it would have been obvious to operate such a complex automated system by employing a digital system to improve computational performance and executing required algorithms with speed and accuracy, and since it is implied that a digital memory is used to store and transmit the memory data.

Allowable Subject Matter

9. Claims 7, 8, 11, 12, 18-21, 26, 30, 31, 33, 44, and 46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in

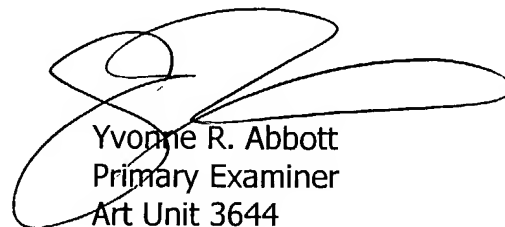
independent form including all of the limitations of the base claim and any intervening claims.

10. Claims 34-36 and 38 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (703)308-2866. The examiner can normally be reached on 7:30-5:00 flex schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone can be reached on (703)306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne R. Abbott
Primary Examiner
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